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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT RICHLAND

STATE OF WASHINGTON, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF HOMELAND SECURITY, a federal agency, et al. Defendants.	NO. 4:19-cv-05210-RMP DECLARATION OF M. NORMAN OLIVER IN SUPPORT OF PLAINTIFF STATES' MOTION FOR § 705 STAY PENDING JUDICIAL REVIEW OR FOR PRELIMINARY INJUNCTION NOTED FOR: October 3, 2019 With Oral Argument at 10:00 a.m.

I, M. Norman Oliver, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein and make this declaration based on my personal knowledge.

2. I submit this Declaration in support of the Commonwealth of Virginia's litigation against the United States Department of Homeland Security regarding the recently issued rule entitled Inadmissibility on Public Charge Grounds (Final Rule). I have compiled the information in the statements set forth below either through personal knowledge, through the Virginia Department of Health (VDH) personnel who have assisted me in gathering this information, or on the basis of documents that I have reviewed. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon VDH.

3. I serve as the State Health Commissioner for the Virginia Department of Health ("VDH"). I have served in this capacity since April 2018. Prior to my appointment, I served as the Deputy Commissioner for Population Health for the Virginia Department of Health where I worked with other state agencies and healthcare systems across the state to improve the health and well-being of all Virginia residents. I also served as the Walter M. Seward Professor and Chair of the Department of Family Medicine at the University of Virginia School of Medicine where I helped lead the transformation of the Department's clinic sites into patient-centered practices focused on population health.

4. The VDH is one of twelve state agencies within Virginia's Secretary

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of Health and Human Resources, and is responsible for the oversight and administration of programs serving Virginia's most vulnerable residents.

5. As the State Health Commissioner for the VDH, I oversee Virginia's statewide public health agency consisting of approximately 3,700 full-time employees and an annual budget of more than $700 million.

6. The mission of the VDH is to protect the health and promote the well-being of all people in Virginia. The goals of the VDH include maintaining a competent and valued work force; fostering healthy, connected and resilient communities; being a trusted source of public health information and services; assuring the conditions that improve health opportunity; and providing internal systems that deliver consistent and responsive support.

7. VDH serves as the leader and coordinator of Virginia's public health system, providing services the protect and promote the health of all of the Commonwealth's residents and visitors. Generally, VDH services are delivered to the public by local health departments (LHDs) or by VDH field offices. Each city & county in Virginia is required to establish and maintain a LHD. Pursuant to statutory authority, VDH has organized these 119 LHDs into 35 health districts. Local health districts provide a variety of services, including the Supplemental Nutrition Program for Women, Infants and Children (WIC), family planning, breast and cervical cancer screening, and immunization.

8. I understand that the U.S. Department of Homeland Security (DHS)

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has issued a new regulation on the public charge ground of inadmissibility under the Immigration and Nationality Act, which I have reviewed. As I understand it, the Final Rule would allow the federal government to expand its consideration of a person's past use of public benefits and future need for public assistance in determining whether someone should be eligible for lawful permanent residency, a new visa, or for an extension of stay or change of stay from an existing visa. I understand that DHS would consider use of one of several specific benefits for a duration of 12 months within a 36 month period to be a heavily weighted negative factor in a public charge determination. Most critically, these factors include programs crucial to resident' health and basic needs, such as the Newcomer's Health Program

9. As a result of that change, I believe the Final Rule will cause immigrants to forego public benefits that are included within the list specified by the Final Rule so as to avoid adverse immigration consequences, despite such benefits being allowed under federal and state law. I also believe that several groups of immigrants will withdraw from public benefits despite not being actually covered by the Final Rule, including: (i) immigrants who are not subject to the public charge test, such as refugees, and (ii) immigrants who are disenrolling even from services that are not included in the public charge determination.

Description of Relevant Program(s)

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10. The WIC Program serves low-income pregnant, postpartum and breastfeeding women, infants and children up to the age of five who are at nutritional risk. WIC provides participants with nutrition education, nutritious foods, breastfeeding promotion and support, and referrals to health and other social services. Research has shown WIC has helped to improve birth outcomes and savings in health care costs, diet and diet-related outcomes, infant feeding practices, immunization rates, and cognitive development. Current Virginia WIC participation is approximately 110,000. Most recent national data shows enrollment by race for the WIC program: 58.63% White; 20.75% Black/African American, 10.29% American Indian/Alaskan Natives, 5.77% Multiple Race. Ethnicity percentages are as follows: 41.8% Hispanic/Latino and 58.1% Non-Hispanic/Latino. Enrollment by category is as follows: 23.35% women; 23.33% infants; and 53.32% children.

The Title X Family Planning Program is the only federal program dedicated solely to the provision of family planning and related preventive health services. VDH is currently the only Title X grantee in Virginia. VDH uses Title X funds to support services at local health districts across the Commonwealth, as well as one federally qualified health center (FQHC) in Rockbridge, Virginia. In the majority of Virginia localities, Title X service sites are the only publicly funded providers of comprehensive family planning services. Given the role of contraception in preventing unintended pregnancies, the Guttmacher Institute

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estimates that $7.09 is saved for every public dollar spent on family planning services. In 2018, 38,021 patients received Title X services at the Virginia Department of Health, ultimately preventing 8,170 unintended pregnancies (Source: Guttmacher Institute Data Center). Of these patients, 34,805 (92%) were living at or below 200% of the federal poverty level; 25,586 (67%) were uninsured; 5,603 (15%) were teens; 12,152 received cervical cancer screenings (pap tests); 7,333 received breast cancer screenings (clinical breast exams); and 12,904 were tested for chlamydia, the most commonly reported infectious disease in the United States.

The Every Woman's Life Program (EWL), administered through VDH's Office of Family Health Services with funding from the Centers for Disease Control and Prevention, began in 1997 and provides access to free, high-quality breast and cervical cancer screening and diagnostic services. Screening and early detection reduces death rates, improves treatment options, and greatly increases survival and quality of life. The program serves approximately 6,000 individuals annually and has provided breast and cervical services to over 60,000 Virginians since its inception in 1997. The program serves low-income, uninsured Virginia women between the ages of 18-64.

Immunizations are proven to be one of the most cost-effective clinical preventive services. Communities with under-immunized populations are at increased risk for outbreaks of vaccine-preventable diseases. Through the

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provision of immunization services, the VDH Office of Epidemiology aims to reduce morbidity and mortality associated with communicable diseases. The primary approach to preventing vaccine-preventable diseases is to assure high vaccination rates throughout the Commonwealth. VDH administers three programs that aim to increase access to vaccines: Virginia Vaccines for Children, Virginia Vaccines for Adults, and Virginia Perinatal Hepatitis B. These programs provide vaccines in collaboration with private and public providers. Eligibility for these programs target those who otherwise would not be able to afford vaccines, including those who are under or uninsured, or on Medicaid. Combined, VDH provides 1.4 million doses of vaccine to approximately 850,000 eligible patients annually.

11. The VDH work unit for the Virginia WIC Program is the Division of Community Nutrition Services within the Office of Family Health Services and local health districts. The Title X Family Planning Program work unit is the Division Child and Family Health within the Office of Family Health Services and local health districts. The Every Woman's Life Program work unit is the Division of Prevention and Health Promotion within the Office of Family Health Services. EWL is administered through twenty-four provider sites across Virginia, including large health systems, academic centers, free clinics, FQHCs, and VDH local health districts. The Division of Immunization within the Office of Epidemiology, in partnership with VDH's 35 local health districts, provides

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immunization services to the Commonwealth.

12. Figures provided in section 10 regarding the number of individuals served in the Virginia WIC, Title X Family Planning and Every Woman's Life Programs are based on actual program enrollment and participation data. Figures provided in section 10 regarding the number of individuals served by the immunization program is based on actual program participation data.

13. The Virginia WIC Program does not require citizenship information from participants for eligibility determination. Even though WIC is not included in public charge determinations, many program participants do not understand the differences in food benefit and community nutrition programs and many assume that WIC services are impacted by public charge determination along with food benefits, such as SNAP. WIC providers serving communities with large immigrant populations routinely provide feedback that participants request discontinuation of WIC services due to fear of the federal administration's immigration policies. This new rule will likely result in negative impacts to program participation, increased inquiries for clarification on how the rule impacts participant eligibility and the need for training of WIC providers to share up to date and accurate information.

14. Title X providers must offer services to patients regardless of residency status or income and must never refuse care due to inability to pay. Title X providers are expected to provide patient-centered counseling to all patients seeking family planning services and to make strong referrals to other support

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services as appropriate. As a result of the Final Charge Rule, Title X providers will need additional training on the practical implications of this regulation and will need to share this information with patients. VDH predicts that this rule will result in patient fear of retribution and make them less likely to seek support services to which they are entitled. While the Title X Family Planning Program is not explicitly included in public charge inadmissibility determinations, many patients do not understand the nuances of federal funding and may assume that they are no longer eligible for Title X services because of this rule. Title X providers working in areas with a large immigrant population regularly share that some immigrant patients are afraid to seek services from government agencies due to the federal administration's immigration policies. This new rule will likely result in increased inquiries from the public attempting to understand the implications of the rule, as well as a drop in patient participation.

15. While being a resident of Virginia is a factor of program eligibility for EWL, an individual's citizenship status is not taken into account when determining eligibility for the program. EWL serves undocumented individuals that meet program eligibility. Women who are enrolled in EWL and diagnosed with breast or cervical cancer may be eligible for Medicaid coverage for treatment through the Breast and Cervical Cancer Prevention Treatment Act (BCCPTA). Eligibility for the BCCPTA is determined by local Virginia Departments of Social Services and women must meet Virginia Medicaid non-

financial eligibility requirements, which include: 1) being age 18-64; 2) being a Virginia resident; 3) being a U.S. citizen or meeting Virginia alien requirements; 4) not being eligible for Medicaid under another covered group; and 5) not having creditable health insurance. Consequently, some individuals may not be eligible for Medicaid treatment coverage through the BCCPTA because of their citizenship status. Due to the differences in how citizenship impacts program eligibility between BCCTPA and EWL, many patients may assume that they are no longer eligible for EWL services because of this rule.

16. An individual's citizenship status is not taken into account when providing immunization services. VDH predicts that this rule will result in patient fear of retribution and make them less likely to seek immunization services when needed.

Harms to Agency Mission or Broader Harms

17. The Final Rule will have a significant negative impact on the VDH's mission to protect the health and promote the well-being of all people in Virginia.

18. Public health services to Virginia communities will be adversely affected as part of the downstream, ripple effects of the Rule.

19. The Rule will have a very deleterious effect on the health of immigrant populations and the health of the Commonwealth, as a whole. As such, the changes pose a public health threat.

20. As non-citizens are forced or feel forced to disenroll from these vital

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health assistance programs out of fear of jeapordizing their legal status because of changes in the Rule, we can expect a number of adverse effects to result.

21. First, People will die. The anxiety and fear generated in the immigrant population will lead to people not seeking care for emergent conditions (heart attacks, for example).

22. We can also expect to see worse health outcomes, especially for pregnant or breastfeeding women, infants, and children. There will be reduced prescription adherence, as well.

23. We can expect to see an increased use of emergency rooms and emergent care as a method of primary healthcare due to avoiding treatment in primary-care or health department settings.

24. We can expect to see an increased prevalence of communicable diseases, including among members of the U.S. citizen population who are not vaccinated.

25. We can expect to see increases in uncompensated care in which a treatment or service is not paid for by an insurer or patient.

Administrative Challenges

26. The Virginia WIC Program previously experienced challenges in communicating the changes of the Public Charge Rule. Program staff participated in webinars and conference calls to gain a better understanding in order to provide clarification to WIC clinic staff and the public that the Virginia

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WIC Program was not included in the regulation's inadmissibility determinations. It is likely that, once the final rule is implemented, VDH programs will face similar challenges in responding to inquiries and communicating which public health programs are affected, as well as those that are not, and the resulting impact on immigrant populations.

I declare under penalty of perjury under the laws of the Commonwealth of Virginia and the United States that the foregoing is true and correct.

DATED this 30th day of August, 2019, at Charlottesville, Virginia.

M. Norman Oliver, M.D., M.A.
State Health Commissioner,
Virginia Department of Health

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 6th day of September, 2019, at Tumwater, Washington.

/s/ Sara M. Cearley
SARA M. CEARLEY
Paralegal